

No. _____

Supreme Court, U.S.

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CLERK

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1986

CHARLES LALLAK, etc. et al.,

Petitioners,

vs.

R. KATHLEEN MORRIS, etc.,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of
Appeals for the Eighth Circuit

PETITION FOR CERTIORARI

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A. QUESTIONS PRESENTED FOR REVIEW

I-VII. Petitioners Lallak hereby restate and incorporate by reference questions I through VI prescribed for review in the Petition for Certiorari by Petitioners Myers and Buchan.

VII. Are Deputy Sheriffs immune from suit under 42 U.S.C. §1983 when the criminal complaint regarding the Lallaks attested to by the arresting officer was facially invalid and when the officers either knew the allegations to be untrue or could not maintain a reasonably objective belief as to the truthfulness of the allegations.

B. LIST OF PARTIES

The complete list of parties for the cases on appeal (hereinafter Lallak) appear in the Appendix to the Myers and Buchan petition.

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D. TABLE OF AUTHORITIES

Petitioners restate and incorporate by reference the Table of Authorities in the Petition for Writ of Certiorari of Myers and Buchan.

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PETITION FOR CERTIORARI

Petitioners Lallak pray that a writ of certiorari be issued to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit in his proceeding.

E. OPINIONS IN THE COURTS BELOW

In re Scott County Master Docket, 618 F. Supp. 1534 (D. Minn. 1985); Myers v. Morris, 810 F.2d 1437 (8th Cir. 1987).

F. JURISDICTIONAL GROUNDS

Petitioners seek review of a decree filed by the Court of Appeals for the Eighth Circuit on February 3, 1987, and the denial was entered by the Court of Appeals for the Eighth Circuit on April 9, 1987. The statutory provision believed to confer on this Court jurisdiction to review the decrees in questions by writ of certiorari is 28 U.S.C. § 1254 (1).

G. CONSTITUTIONAL PROVISIONS, ORDINANCES, AND REGULATIONS WHICH THE CASE INVOLVES

CONST. amendment I provides:

"Congress shall make no law...abridging the freedom of speech..or the right of the people peaceably to assemble..."

CONST. amendment IV provides:

"The right of the people to be secure in their persons, houses, papers, and

effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

CONST. amendment V provides:

"No persons shall be...deprived of life, liberty, or property, without due process of law.."

CONST. amendment XIV provides:

"...nor shall any state deprive any person of life, liberty or property without due process of law..."

CONST. amendment VIII provides:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

42 U.S.C. § 1983 provides:

"Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory or the District of

Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunity secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress..."

Minn. Code Admin. Regs. 9560 et seq requires preservation of the family unit in alleged neglect situations.

STATEMENT OF THE CASE

A complete recitation of the facts cannot be presented because the district court order appealed from was based upon a pre-discovery motion for dismissal on the grounds of absolute and/or qualified immunity. As such, the record is incomplete and does not include most of the evidence

developed through discovery, including a tape recording of defendant Morris containing numerous admissions, the expert opinion testimony petitioners intended to introduce regarding the lack of objectivity of defendant officers, failure on the part of defendant sheriff to properly supervise the officers assigned to the investigation and evidence establishing that the prosecutor's conduct in taking over the investigation of the case was not within the scope of her duties as a prosecutor. However, the petition for certiorari submitted by Appellants Myers and Buchan recites facts germane to those cases. Accordingly, Appellant Lallaks specifically incorporates by reference the Statement of Facts and Argument in Appellants Myers and Buchan Petitions.

In 1983, Jordan, Minnesota was a small, quiet Minnesota River Valley town, when it was rocked by allegations of child sex abuse, the investigation of which eventually resulted in the arrest of 24 adults from the Jordan area.

The arrests began on September 26, 1983 when a woman, later arrested herself, contacted Jordan police to report that she feared that James Rud had sexually abused her ten-year-old daughter and eight-year-old son. Rud was arrested immediately. He later admitted to having had sexual relations with 16 male and female children, ranging in age from five to twelve. During the course of the investigation of Rud, the police learned the names of other children purported to be victims of abuse.

Memorandum and Order*; Humphrey Report, Add. 1-19, App. Vol. 5, pp. 1602- 1643.

Rud, who had four previous sex-related convictions, pleaded guilty in August, 1984 in exchange for a six-year prison sentence. He then implicated 18 of the 24 defendants in a statement. The case then quickly unraveled.

At the first trial, of Robert and Lois Bentz, Rud was unable to identify Bentz, one of those he had implicated. A boy admitted on cross-examination that he lied three

* The Memorandum and Order is contained in the separately bound "Trial Court Orders Appealed from and Memorandum Opinion" submitted by petitioners Myers and Buchan in conjunction with their Petition.

times on direct examination. One girl said during cross-examination that the Bentz case had been discussed at a pool party given by the prosecution. Rud also withdrew his statements after learning that he had failed a lie detector test, and his plea agreement was revoked.

Of all the criminal cases involving the so-called Jordan sex ring, only the Bentz case went to trial. In September of 1984, the jury acquitted the Bentzes of all counts. On October 15, 1984, following the jury selection in the trial of Donald and Cindy Buchan, Scott County Attorney R. Kathleen Morris dismissed the charges against the remaining criminal defendants. Shortly after she was ordered to turn over certain police notes to defense counsel.

Subsequently, the Minnesota Attorney General, Hubert H. Humphrey, the Minnesota Bureau of Criminal Apprehension and the Federal Bureau of Investigation assumed control over further investigations and legal proceedings involving alleged Scott County child abusers. (Id.) These authorities did not reinstate criminal actions against any of the 21 individuals who had their charges dismissed. Without exception, the children of each of these adult appellees has been returned to their custody following family court proceedings, or, in the case of the Lallaks, immediately after the criminal charges were dismissed.

The "investigation" of these cases by Scott County was coordinated by the County Attorney and involved members of both the

Human Services Department and the Sheriff's Department. Ms. Morris completely usurped the role of Sheriff Tietz in running the investigation of these cases. Weekly meetings were held in Ms. Morris' office with members of the Department of Human Services and the Sheriff's Department throughout late 1983 and early 1984. In these meetings, information was shared and assignments as to child interviews were given. Ms. Morris directed social workers to interview children for the purposes of eliciting information to be used against those children's parents and other adults. Ms. Morris directed those social workers not to undertake their normal role of providing social services to the children and their parents but, rather, to undertake

a vigorous course of investigation. Additionally, Ms. Morris regularly scheduled interviews of children for the purposes of soliciting and directing those children to fabricate stories of child abuse against their parents and other adults.

A complete review of the existing record makes it clear that allegations of sexual abuse were fabricated in reckless disregard of the truth, with the knowledge and at the direction of Ms. Morris. It is equally clear that Sheriff Tietz failed to intervene in this violation of plaintiffs' rights.

Perhaps the most egregious violation of constitutional rights occurred in the Lallaks' case. Charles and Carol Lallak were arrested on May 23, 1984. They were

the second to last persons charged. The criminal complaints are identical, and name three children as accusers, Andrew and Amy Myers and Jeff Brown. The principal accuser against the Lallaks was eleven-year-old Andrew Myers.

Andrew and Amy Myers were taken from their parents on February 6, 1984 when their father was arrested. That evening, four-year-old Amy was taken for a physical examination which disclosed no abuse. Andrew first suggested that he was sexually abused, almost three full months and 25 interviews after he was taken from his parents. Furthermore, the County had been previously advised by Psychologist Bevans in the clearest, most extreme terms that Andy Myers was about to break psychologically

because of his separation from his family. Amy Myers, then only four years old, acquiesced to the police investigator's questions on May 5, 1984 and agreed with them that she had been "hurt" and "spanked" with the "finger in the butt." Amy's statements in that interview were consistent with Andy's previous statements because, as is clear from the police report, the investigators asked leading and suggestive questions, and Amy responded with one word or short answers. As attested to by numerous deponents, including assistant county attorneys, deputies, and children, the children interrogated about sexual abuse were repeatedly asked leading and suggestive questions.

After a three-month separation from their family, 25 interviews and repeated leading and suggestive questions, the Myers children broke (as warned by Psychologist Bevans) and allegedly incriminated the Lallaks. Both children have recanted this testimony. When Andy Myers was asked by an FBI agent why he made up these stories, he replied that's what the investigators wanted him to say.

The criminal complaint against the Lallaks also charges them with two felony counts for abusing eleven-year-old Jeff Brown. The specific allegations involving Jeff Brown made by the complainant Deputy Michael Busch were:

Complainant is informed by Scott County Detective Pat Morgan that J.B., male

juvenile, DOB: 04-14-73, told Detective Morgan that during the summer of 1983 he camped at the Quarry Campground with the Myers, Lallaks, Ranks and Brown.

J.B. and female juvenile B.B., DOB: 01-21-75, were shown pictures of the Quarry Campground which they identified as the location where the above-described camping activity took place. J.B. and B.B. stated that they had been sexually abused by various adults and on various occasions at the Quarry Campground during the summer of 1983.

Based upon the above language, the Complaint was facially invalid. It merely recites that Detective Busch was informed by Detective Morgan that Jeff Brown camped at the Quarry Campground with the Myers, Lallaks, Ranks and Browns. No where did the Complaint recite any facts to sustain the allegation that Jeff Brown was abused by the Lallaks. In fact, Jeff Brown recanted all testimony regarding any abuse by adults.

Furthermore, he, too, was interviewed well over 25 times and was subjected to repeated leading and suggestive questions.

One example of the extreme pressure brought to bear upon these children is represented by the interrogation session of Jeff Brown on July 16, 1984. Jeff was interrogated all afternoon and into the evening. The following individuals were initially present during that session: Jeff Brown, Kathleen Morris (County Attorney), Gehl Tucker (Assistant County Attorney), Nancy Platto (Assistant County Attorney), Norm Pint (Deputy Sheriff), Tom Price ("Psychotherapist"), and Diane Johnson (Guardian). Later in the evening, Robert Van Siclen, Jeff Brown's appointed therapist, was called by Tom Price, a non-

court appointed therapist, and asked to attend the sessions because "Jeff was talking about some things that had him rather scared." Van Siclen testified that Pint, Price and Tucker were all asking questions. Van Siclen further testified that he thought the questioners were letting Jeff Brown "be too glib about his answers" and asked leading and suggestive questions. Specifically, Van Siclen noted that the questioners "seemed to focus on certain individuals who I don't know, but that they seemed to focus on certain individuals rather than allowing more open-ended responses.

Ultimately, Jeff Brown began to agree with his questioners about certain allegations involving the murder of several

children. The deputy sheriff laid out a series of pictures and asked which people were involved in the murders. As related by Van Siclen, "Jeff sat drinking a Coke and pointing at them with his feet, and I don't think I would have let him be that informal." Finally, Jeff asked to talk to Diane Johnson. They left and went into another office. They came back and Jeff then told all assembled that "he made all of the stories about the murders up, that he had made those up, that they weren't true."

Then, Jeff demanded to speak with Van Siclen alone. Jeff told Van Siclen "that in fact everything else had been made up and that all of the sex stuff, quote, unquote, 'all of the sex stuff' was made up and that none of it ever happened . . ." Jeff later

made these statements to everyone at the July 16 meeting. Notwithstanding these repeated recantations, the only written reports prepared regarding this interview were those of Norm Pint wherein he reported the allegations of murder and mutilation of four young children but failed to note the recantations or make any mention of the varied exculpatory evidence presented by Jeff Brown on July 16, 1984. Further, all that was reflected in the notes prepared by Mr. Pint was the allegations of murder and sex abuse.

The criminal complaint against the Lallaks also recited that James Rud was charged with criminal sexual conduct, even though by defendant's own admission there is or was no connection between Rud and the

Lallaks, nor had they ever met. The Complaint further alleges that Detective Pint informed Detective Busch that John Krah1 was abused by the Lallaks. John Krah1, however, never met the Lallaks nor does any note or police report exist evidencing any such involvement by Krah1. Apparently, defendants recognized this because neither of the Lallaks were ever charged with abusing Krah1.

Additional testimony developed after the initial summary judgment motion, and not a part of the record before this Court, bears directly upon the liability of Ms. Morris and the deputies. As attested to by assistant county attorneys, deputies, and children, defendants engaged in conduct which is fundamentally offensive to a sense

of justice and which shocks the conscience: separated children from their parents, and thereafter arrested parents on the basis of allegations not even approaching probable cause; subjected young children to repeated interrogations by multiple interrogators and asked leading and suggestive questions; rewarded allegations of abuse and disapproved of allegations exculpating the accused; used the arrest of parents to create an exigency for the need to remove children from the home; transformed the role of social workers from the providers of services to investigators and interrogators; transferred and effectively eliminated the role of the Scott County Sheriff with regard to supervision of the investigators, and suppressed and destroyed exculpatory

evidence. All of these activities, separately and collectively constitute a violation of the constitution.

**I. BASIS FOR FEDERAL JURISDICTION
IN THE COURT OF FIRST INSTANCE**

Jurisdiction in the Minnesota Federal District Court was conferred by 28 U.S.C. § 1343 (3).

Petitioners Lallak expressly restate and incorporate by reference the argument submitted in the petition for writ of Certiorari of Myers and Buchan.

July 6, 1987

Respectfully submitted,

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